

No. 1-10-0288

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

DAVID GONZALEZ,)	
)	
Plaintiff-Appellee,)	Appeal from the
v.)	Circuit Court of
)	Cook County, Illinois.
)	
JODY P. WEIS, SUPERINTENDENT OF)	
THE CHICAGO POLICE DEPARTMENT,)	No. 08 CH 34757
)	
Defendant-Appellant,)	
and)	Honorable
)	Sophia H. Hall,
THE CITY OF CHICAGO POLICE BOARD,)	Judge Presiding.
)	
Defendant.)	

JUSTICE JOSEPH GORDON delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Epstein concurred in the judgment.

ORDER

HELD: The City of Chicago Police Board discharged an officer following an off-duty incident where he allegedly consumed alcohol while in possession of his weapon, attacked a fellow nightclub patron, attempted to attack him again after being escorted out of the club, and assaulted two police officers. On administrative review, the circuit court affirmed the finding of guilt but reversed the penalty of discharge. We reversed the order of the circuit court, holding that, in light of the considerable deference we are required to accord to the decision of the Board, the penalty of discharge was not unreasonable.

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The Superintendent of the City of Chicago Police Department (CPD) filed disciplinary charges against Chicago Police Officer David Gonzalez, alleging that he violated CPD's Rules of Conduct in an off-duty incident where he engaged in a fight with a fellow nightclub patron. More specifically, the CPD alleged that in the early morning hours of September 19, 2004, Gonzalez was at the Studio 63 Club (club) in Summit, Illinois. At the club, he consumed alcohol while possessing a firearm and then instigated a fight with another bar patron, Ricardo Valdez, which prompted Summit police officers to intervene. After the fight had been broken up and both parties had been escorted outside of the club, Gonzalez allegedly attempted to attack Valdez again. He additionally pushed one of the Summit police officers, hit another officer, and resisted arrest. The CPD further alleged that Gonzalez subsequently lied about the incident to an investigator from CPD's Office of Professional Standards, in that he falsely claimed that Valdez was the aggressor in the altercation outside of the club.

After a hearing, the City of Chicago Police Board (Police Board or Board) found Gonzalez guilty of the charged violations and ordered him discharged. On administrative review, the circuit court affirmed the Board's findings of guilt but found the penalty of discharge to be unreasonable and remanded the case to the Board with directions to impose a sanction less than discharge. On remand, the Police Board imposed a four-year suspension, and the circuit court affirmed that suspension.

The Police Board now appeals from the circuit court's original order setting aside the Board's order discharging Gonzalez. Gonzalez does not cross-appeal his four-year suspension. For the reasons that follow, we reverse the order of the circuit court and remand with instructions

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to reinstate the original order of the Board imposing a penalty of discharge.

I. BACKGROUND

On October 18, 2007, the Superintendent filed charges with the Police Board, seeking Gonzalez's discharge for violating several of the Chicago Police Department Rules of Conduct (CPD Rules) with regard to his conduct at the club on September 19, 2004, and his subsequent statement about that incident to the CPD's Office of Professional Standards. Specifically, Gonzalez was charged with violating the following five provisions of the CPD Rules:

"Prohibited acts include:

Rule 1: Violation of any law or ordinance.

Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department.

Rule 6: Disobedience of an order or directive, whether written or oral.

Rule 8: Disrespect to or maltreatment of any person while on or off duty.

Rule 14: Making a false report, written or oral."

The Police Board held a hearing on these charges. At this hearing, the CPD called the following witnesses: Gonzalez himself as an adverse witness; Valdez, the club patron who engaged in the fight with Officer Gonzalez; Jennifer Buenrostro, Valdez's girlfriend at the time

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of the incident, who was with him at the club; Nick Goutos, the owner of the club, and William Sullivan, one of the club's bouncers, both of whom witnessed the altercations between Gonzalez and Valdez; and finally, Officer Maria Gatlin and Lieutenant James Sylvester, the two Summit police officers whom Gonzalez allegedly attacked.

Gonzalez, testifying as an adverse witness for the CPD, stated that he arrived at the club at approximately 12:45 a.m. with his father and his friend Jessie Calderon. He said that prior to arriving at the club, he had "probably" consumed at least two alcoholic beverages at his parents' house, and he admitted that he consumed another at the club while in possession of his handgun.

Gonzalez further admitted that there was an altercation between him and Valdez in the club in which his shirt was torn off and his glasses were knocked off, although he stated that he did not recall headbutting Valdez. He testified that club bouncers separated the two of them and escorted them out of the club; he was taken to the west entrance, while Valdez was taken to the east entrance. Once he was out of the club, Officer Gatlin spoke with him. She asked him who he was, and he informed her that he was a Chicago police officer.

After speaking with Officer Gatlin, Gonzalez said, he was standing outside on the west side of the building with his father and Calderon, waiting for someone inside the club to retrieve his glasses. There was a parking lot on the west side of the building, Gonzalez said, and in order for somebody to reach that parking lot, they would have to pass by him. According to Gonzalez, Valdez approached him "in an aggressive manner" and "calling me names." Summit police officers were in the general vicinity, but they were not directly escorting Valdez. He stated that there was a verbal exchange between him and Valdez, although he denied lunging at Valdez or

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making any physical contact with him. “And then the next thing I knew,” he said, “police officers come in, I felt – I was maced, and at the time – I mean that’s – as soon as that happened, I really couldn’t see too well and that’s when I was, yes, I was pushed down to the ground.” In response to questions by counsel for the CPD, he stated that he did not intend to push Officer Gatlin, although he acknowledged that he might have accidentally made contact with her. He further denied resisting Lieutenant Sylvester, attempting to strike him in the face, or reaching for his handgun during the altercation.

Gonzalez further testified that on April 26, 2006, he gave a statement about the incident to the Office of Professional Standards. He admitted being aware that any intentional falsification of any answer would be in violation of CPD rules. In that statement, Gonzalez testified, he told the CPD that Valdez initiated physical contact with him inside the club and that Valdez was also the aggressor in the second altercation outside the club.

Valdez testified for the CPD that on the morning of September 19, 2004, he was at the club with his girlfriend, his sister, and his sister’s husband. He stated that he was ordering a drink and “minding [his] own business” when Gonzalez approached him and asked if Valdez remembered him. Valdez told Gonzalez that he did not (and he testified at the hearing that he did not, in fact, recognize Gonzalez). Gonzalez then headbutted him. The two of them tussled on the floor for a while before being separated by club security. Valdez was taken to the entrance of the bar. Summit police arrived on the scene and spoke to Valdez. After he explained to them what had happened, they told him to “go ahead and go on your own way after.”

Valdez testified that he began walking to his car, which was parked on the west side of

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the building. He stated that as he was walking, Gonzalez jumped at him, but Valdez evaded the attack. The police restrained Gonzalez, tussled with him, and then fell to the ground. Asked about his injuries, Valdez stated that he subsequently had two teeth removed and that he also had a bloody nose and "a fat lip."

During cross-examination, Valdez stated that he had previously given testimony under oath in a criminal proceeding related to this incident. (Although the nature of that criminal proceeding was not elaborated upon in Valdez's testimony, Gonzalez was apparently the defendant in that proceeding.) Counsel for Gonzalez then attempted to impeach Valdez with various statements he made at that trial, asking him whether he remembered testifying that he did not see anyone on the ground during the fight outside the bar and that he recognized Gonzalez from a prior incident. Valdez stated that he could not recall having given such testimony.

Valdez also testified during cross-examination that, during the initial altercation inside the club, he was not aware that Gonzalez was a Chicago police officer. He was informed of this fact by someone else when he was being escorted out of the club. Valdez further testified that Gonzalez never displayed his badge to him.

The next witness for the CPD was Buenrostro, who was Valdez's girlfriend at the time of the incident and who was with him at the club. Buenrostro testified that around 3 a.m., Valdez was at the bar getting drinks while she was on the dance floor. When she returned, she observed Valdez speaking with Gonzalez. Gonzalez was saying, "You know who I am," and Valdez replied, "I don't know who you are." Buenrostro stated that they repeated this a few times back and forth, and then Gonzalez said, "Well, why don't I remind you who I am," and headbutted

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Valdez in the face. Security came and took them out of the club.

Buenrostro stated that after exiting the club, she learned that Gonzalez was a Chicago police officer, because she overheard the Summit police officers saying that he was carrying his gun and his badge. Subsequently, Valdez and Buenrostro were walking toward the parking lot when Gonzalez tried to charge at Valdez. The Summit police officers restrained him.

Buenrostro stated that she did not see Gonzalez push a female officer to the ground, and the only contact she observed between Gonzalez and the Summit police officers was that the officers grabbed him.

Goutos, the owner of the club, testified for the CPD that at around 2:30 a.m. on September 19, 2004, he was standing at the front door of the club when a bartender ran up and told him that there was a fight inside. Goutos ran inside and observed Gonzalez fighting with Valdez. He did not see how the altercation began. Goutos and two club doormen separated the parties and escorted them out of the club, taking Gonzalez to the west entrance and Valdez to the east entrance. Goutos' brother, who was also at the club that night, called the police, because "it was a situation that was not defusing itself" and because there was a gun on Gonzalez's waistband. Before the police arrived, Goutos asked Gonzalez why he was carrying a gun. Gonzalez responded that he was a policeman, although he did not specifically inform Goutos that he was a Chicago police officer.

Goutos testified that approximately five to ten minutes after the police were called, a number of Summit police officers, including Officer Gatlin and Lieutenant Sylvester, arrived at the club. They spoke to both parties and then started walking Valdez to his car, which was

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parked in the west parking lot. Goutos testified that the officers would have been visible to Gonzalez. There was a verbal exchange between Gonzalez and Valdez, although Goutos was unsure who yelled first. According to Goutos, Gonzalez seemed “very aggressive and very angry.” He lunged at Valdez, shoving Officer Gatlin out of the way. Lieutenant Sylvester grabbed Gonzalez and wrestled him to the ground. Officer Gatlin shouted “He has a gun,” and then another officer sprayed Gonzalez with mace.

Sullivan, a bouncer for the club, also testified for the CPD. Like Goutos, he did not see the altercation begin. He was standing at the front of the club when a bartender ran up and informed him that a fight had broken out in the back. Upon going to the back of the club, Sullivan observed four males fighting, including Gonzalez. Sullivan grabbed one of the fighting individuals, whom he later learned to be Gonzalez’s father, and wrestled him to the ground, both to prevent him from continuing the fight and to protect him. While he was shielding Gonzalez’s father with his body, someone hit him with a bar stool.

After the fight was broken up, Sullivan said, he escorted Gonzalez and his father out of the bar through the west entrance. He stated that Gonzalez was very aggressive and belligerent, and his speech was slurred. He saw Gonzalez remove his shirt in an aggressive manner.

Subsequently, a police officer was escorting one of the other patrons involved in the fight, whom Sullivan characterized as “the victim,” toward the west parking lot, and Gonzalez “tended to go after this individual again.” Sullivan testified that Gonzalez was not able to make contact with “the victim,” but he did shove Lieutenant Sylvester, after which Lieutenant Sylvester wrestled him to the ground. Sullivan did not see everything that happened during this altercation

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because he was busy restraining Gonzalez's father at the time. He was aware that Officer Gatlin fell to the ground, but he did not see whether Gonzalez had any physical contact with her.

Officer Gatlin of the Summit Police Department testified for the CPD that she was dispatched to the club at approximately 3 a.m. because of an unrelated fight and then turned to the fight between Gonzalez and Valdez inside. She escorted Gonzalez to the west side of the club while Lieutenant Sylvester escorted Valdez to the east side. She recalled that Gonzalez had a shirt on, but it was torn. She further stated that she believed him to be intoxicated based on the "strong odor of alcohol" on his breath, his lack of balance, and his slurred speech. He told her that he worked for the City of Chicago, and Calderon told her that Gonzalez "worked for the Chicago police."

Officer Gatlin testified that she and Lieutenant Sylvester decided to escort Valdez to his vehicle, which was in the west parking lot. For Valdez's safety, she walked to his left and Lieutenant Sylvester walked to his right. According to her, Gonzalez charged at her and shoved her with both hands hard enough that she fell to the ground. He then attempted to strike Valdez. Lieutenant Sylvester was able to get Gonzalez onto the ground, and the Summit police officers handcuffed him, although he was fighting and resisting the entire time. Officer Gatlin stated that while Gonzalez was being detained at the Summit police station, he was belligerent, although when CPD personnel later showed up, his demeanor changed to "very quiet, very subdued."

Lieutenant Sylvester, the final witness for the CPD, testified that at approximately 3 am, he responded to a call regarding a disturbance at the club. He stated that the club bouncers broke up the fight between Gonzalez and Valdez and took them outside, Gonzalez to the west entrance

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and Valdez to the east. Lieutenant Sylvester spoke with Valdez, who was bleeding from the face and reported that Gonzalez had headbutted him. Officer Gatlin then approached the two of them, having spoken with Gonzalez. She informed Lieutenant Sylvester that “The other guy is supposed to be a police officer.”

Lieutenant Sylvester stated that once Valdez had calmed down, he and Officer Gatlin began escorting Valdez to the west parking lot. He testified that Gonzalez jumped toward them, pushing Officer Gatlin and knocking her down. Lieutenant Sylvester then grabbed Gonzalez and went down to the ground with him. People were yelling “He’s got a gun.” Although Lieutenant Sylvester could not see a gun on him at that time, he saw Gonzalez reaching for something with his right hand, so he grabbed that hand. Officer Gatlin then sprayed Gonzalez with mace, and Gonzalez was subdued and handcuffed. Lieutenant Sylvester stated that he smelled a “high odor” of alcohol on him and believed him to be intoxicated. At the station, according to Lieutenant Sylvester, he was belligerent and very loud, although he calmed down a couple of hours later when CPD personnel arrived at the station.

In his defense, Officer Gonzalez called his father Mark Gonzalez (whom we shall refer to as Mr. Gonzalez to avoid confusion) and his friend Calderon, both of whom were with him at the club. Mr. Gonzalez testified that at the club, he observed a man (later identified as Valdez) walking by and staring at his son repeatedly. Mr. Gonzalez went to the bar to get a beer. While he was waiting to be served, he turned around and saw Valdez fighting with his son: “[H]e had David against the bar, had him by the shirt, head against the bar, and that’s when they started struggling.” He testified that he never saw Gonzalez headbutt anyone or strike anyone with his

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fist, although he admitted he did not see the start of the altercation.

Mr. Gonzalez testified that the bouncers and security guards came in and broke up the fight, after which he, his son, and Calderon were escorted out the west entrance to the club. Both he and his son had left their glasses inside the club. His son wanted to leave, but Mr. Gonzalez wanted to get his glasses, so he asked a bouncer at the entrance to the club to retrieve his glasses for him.

While they were waiting, Mr. Gonzalez testified that he saw Valdez walking toward them. Mr. Gonzalez yelled, "Watch out, David, he's coming out again." Officer Gonzalez and Valdez began yelling at each other, and Mr. Gonzalez attempted to get between them. Then, according to Mr. Gonzalez, the Summit police officers came and sprayed Gonzalez with mace. He did not see Gonzalez having any contact with Valdez outside the bar, nor did he see Gonzalez grab any police officer physically or reach for his gun. After the Summit police officers subdued Gonzalez, they took him to the Summit police station. Mr. Gonzalez went to the station to inquire about him but was told to leave or he, too, would be arrested.

Calderon also testified on Gonzalez's behalf. He stated that shortly after they arrived at the club, he saw Valdez circling them and staring at them. "I kind of figured that this guy was trouble," he said. After Valdez passed by them a few times, he approached Gonzalez and cornered him against the bar, and almost immediately "hell broke loose." Calderon stated that he did not see Gonzalez headbutt anyone or punch anyone with a closed fist.

Calderon stated that after the fight, he, Gonzalez, and Gonzalez's father were taken out of the bar. Officer Gatlin spoke with both him and Gonzalez. Calderon stated that, although he

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was “riled up,” Gonzalez was calm. While they were waiting for Mr. Gonzalez’s glasses to be retrieved, Valdez came around the corner. Mr. Gonzalez said, “Oh, here he comes again,” and Calderon began yelling at Valdez. Then, according to Calderon, police officers came and pushed Gonzalez to the ground. He did not see Gonzalez run towards Valdez or strike him, nor did he see Officer Gatlin fall.

Gonzalez also called as witnesses Chicago police officers Sergeant Daniel Kivel and Deputy Patrick McNulty. Both testified that on the morning of September 19, 2004, they were called to the Summit Police Department, where they spoke with Gonzalez. Sergeant Kivel described Gonzalez as quiet, cooperative, and responsive to questions. In addition, Sergeant Kivel said, Gonzalez did not appear intoxicated, contrary to what was stated in the arresting officer’s report. Deputy McNulty testified similarly that Gonzalez was cooperative, quiet, and meek. There was an odor of alcohol on him, but it was not predominant; his movements were steady and his speech was not slurred; although his eyes were bloodshot, Deputy McNulty opined that this was a result of the mace he had been sprayed with earlier.

Gonzalez additionally called four character witnesses to testify regarding his professional conduct. The first such witness, Jim Thompson, a retired Chicago police officer, stated that he was the director of security at Harold Washington College, and Gonzalez had worked under him as a security officer for over four years. Thompson testified that Gonzalez’s behavior during this time was “[c]ompletely professional.” He never heard any complaints from students or teachers about Gonzalez’s conduct, only praise, and he never smelled alcohol on Gonzalez.

Gonzalez’s second character witness, Sergeant John McGee, testified that Gonzalez

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worked under him as a patrol officer in the Chicago Police Department from 2001 to 2003. The district that he was assigned to patrol was a dangerous one; there was a lot of gang activity, and officers were regularly attacked. According to Sergeant McGee, Gonzalez was a hard worker, well-liked by his fellow officers, and “a joy to have around.” Sergeant McGee never smelled alcohol on Gonzalez when he showed up for work.

Gonzalez’s third and fourth character witnesses, Lieutenant Robert Weisskopf and Lieutenant James Conlisk, were both Gonzalez’s superiors at the CPD’s Alternate Response Section, which Lieutenant Weisskopf described as a service for taking and responding to non-emergency phone calls. Lieutenant Weisskopf testified that Gonzalez had been working under him as a call taker for the past two or three years. He stated that all of Gonzalez’s work was “very good” and described him as an “honorable officer.” He additionally stated that he had never noticed alcohol on Gonzalez’s body or breath.

Lieutenant Conlisk testified that Gonzalez had been under his supervision for approximately two years. He stated that Gonzalez had a positive attitude and took his responsibilities seriously. He never received any complaints about Gonzalez, nor did he hear any negative comments about him from his fellow officers. Like Lieutenant Weisskopf, he testified that he never noticed the odor of alcohol on Gonzalez.

Gonzalez finally testified on his own behalf. He stated that after the incident at the club, at the suggestion of the CPD, he participated in a three-month outpatient alcohol awareness program. After he completed that program, he submitted himself for a psychological evaluation and was found fit for duty. He further stated that after the completion of that program, he

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attended weekly AA meetings for the next six to eight months, although he did not consider himself to be an alcoholic.

Gonzalez additionally testified that, within a week after the incident at the club, he met personally with the Summit chief of police to express regret over the incident. "I mean, it was just a big mistake out there that night," he said. "I didn't have any intent to harm any of his police officers or cause any trouble."

During his closing argument before the Board, counsel for the CPD acknowledged that Gonzalez had been acquitted of criminal charges against him arising out of the incident at issue. However, he argued that Gonzalez's acquittal had "no bearing on this proceeding" because different charges were at issue and because the standards of proof were different in the two proceedings.

On August 21, 2008, the Police Board found Gonzalez guilty of all charges and ordered him discharged. It made the following specific factual findings: Gonzalez violated CPD Rule 1, which prohibits the violation of any law or ordinance, when he committed battery against Lieutenant Sylvester and Officer Gatlin and resisted arrest. He violated CPD Rule 2, which prohibits conduct "which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department," by committing the aforementioned acts as well as by being in possession of a firearm while consuming alcoholic beverages and falsely reporting to the Office of Professional Standards that Valdez was the aggressor in the altercation outside the club. He violated CPD Rule 6, which prohibits disobedience of an order or directive, by being in possession of a firearm while consuming alcoholic beverages. He violated CPD Rule 8, which

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prohibits disrespect to or maltreatment of any person, by pushing Officer Gatlin and hitting Lieutenant Sylvester. Finally, he violated CPD Rule 14, which prohibits making a false report, with his aforementioned statement to the Office of Professional Standards.

On administrative review, the circuit court affirmed the Police Board's findings of fact and its findings that the rule violations had occurred. However, it also found that the penalty of discharge was "arbitrary and capricious under the circumstances" and therefore reversed the penalty and remanded to the Police Board with directions to impose a sanction less than discharge.

The Superintendent subsequently filed a motion asking the court to make findings of fact or conclusions of law supporting its order. On August 6, 2009, the court explained:

"The Court finds that the termination is disproportionate, therefore arbitrary and capricious as a matter of law.

The Court finds that the off-duty offense of this particular plaintiff does not show a substantial shortcoming rendering the police officer's continuance in office or employment in some way detrimental to the discipline and efficiency which the law and public opinion recognizes as good cause."

On remand, the Police Board issued an order on September 10, 2009, stating that it remained convinced that discharge was warranted, but in order to comply with the circuit court's remand order, it would instead impose a four-year suspension on Gonzalez.

Gonzalez filed a motion asking the circuit court to find that the Board had acted in "bad faith" by imposing a four-year suspension and requesting that the penalty be reduced to no more

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than a two-year suspension. On December 29, 2009, the circuit court denied Gonzalez's motion. It later amended its order to state that it affirmed the Police Board's decision to impose a four-year suspension.

The Superintendent now appeals the circuit court's original order reversing the Board's decision to discharge Gonzalez. Gonzalez does not cross-appeal his four-year suspension.

II. ANALYSIS

Judicial review of decisions of the Police Board is governed by the Administrative Review Law. 65 ILCS 5/10-1-45 (West 2010) ("The provisions of the Administrative Review Law, and all amendments and modifications thereof, and the rules adopted pursuant thereto, shall apply to and govern all proceedings *** of the Police Board of a city of more than 500,000 population"). As the reviewing court, we review the decision of the Board, not that of the circuit court. *Krocka v. Police Bd. of City of Chicago*, 327 Ill. App. 3d 36, 46 (2001). Review of the Board's decision requires a two-step analysis. First, we determine whether the Board's findings are contrary to the manifest weight of the evidence. *Launius v. Board of Fire and Police Com'rs of City of Des Plaines*, 151 Ill. 2d 419, 427-28 (1992) (where there was conflicting evidence, the Board's decision to believe one side over another was not against the manifest weight of the evidence). Second, we determine whether the findings of fact provide a sufficient basis for the Board's decision that cause for discharge exists. *Launius*, 151 Ill. 2d at 435. "Cause" has been defined as " 'some substantial shortcoming which renders [the employee's] continuance in his office or employment in some way detrimental to the discipline and efficiency of the service and something which the law and a sound public opinion recognize as a good cause for his not longer

occupying the place.’ ” *Walsh v. Board of Fire and Police Com’rs of Village of Orland Park*, 96 Ill. 2d 101, 105 (1983), quoting *Fantozzi v. Board of Fire & Police Commissioners*, 27 Ill. 2d 357, 360 (1963). The Board’s finding as to cause is entitled to considerable deference and shall be overturned “only if it is arbitrary and unreasonable or unrelated to the requirements of the service.” *Walsh*, 96 Ill. 2d at 105; *Launius*, 151 Ill. 2d at 435.

A. Whether the Board’s Findings Were Against the Manifest Weight of the Evidence

At the outset, Gonzalez challenges the Board’s findings that he violated CPD Rule 1, which prohibits violation of any law or ordinance, and CPD Rule 14, which prohibits the making of a false report. He does not dispute the Board’s findings of guilt with respect to the remaining three rules violations that he was charged with, namely, conduct which impedes the CPD’s goals or brings discredit upon the CPD, disobedience of an order, and disrespect to or maltreatment of any person. We consider Gonzalez’s contentions in turn.¹

1. CPD Rule 1

Gonzalez first contends that the Board erred in finding that he violated CPD Rule 1 through his violation of two criminal statutes, namely, battery and resisting arrest. It is undisputed that, following the incident at the club, Gonzalez faced criminal charges for battery and resisting arrest but was acquitted of those charges at trial. Gonzalez contends that his

¹ The Board argues that Gonzalez has waived such claims because he did not cross-appeal from the circuit court’s decision affirming the findings of the Board, including the findings of guilt with respect to violation of these two rules. However, in any event, we find Gonzalez’s claims in this regard to be without merit, for the reasons that shall be discussed below.

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acquittal of those criminal charges is decisive of the issue in subsequent proceedings before the Board. The CPD contends, as it did before the Board, that the burden of proof in criminal and administrative proceedings is different, so acquittal in a criminal proceeding does not bar an agency from finding that the respondent engaged in conduct constituting a crime.

At the outset, we note that, in this appeal, Gonzalez does not contest the underlying factual findings that form the basis for this alleged rule violation. That is, he does not contest the Board's findings that he pushed Officer Gatlin, he struck Lieutenant Sylvester, and he struggled with them and refused to allow himself to be handcuffed by them. Moreover, Gonzalez acknowledges that these same underlying factual findings provided the basis for other rules violations which he does not contest in the instant appeal. He does not dispute the Board's findings that his actions toward Officer Gatlin and Lieutenant Sylvester constituted conduct which impedes the CPD's efforts to achieve its policy and goals and/or brings discredit upon the CPD, in violation of CPD Rule 2, and that it also constituted disrespect to or maltreatment of others, in violation of CPD Rule 8. Gonzalez's challenge on appeal is confined to the narrow issue of whether such acts may be considered criminal violations for purposes of CPD Rule 1 when he was previously acquitted of such charges in a criminal trial.

On this issue, we agree with the CPD. We find the case of *Grames v. Illinois State Police*, 254 Ill. App. 3d 191 (1993), to be instructive. The plaintiff police officer in *Grames* was discharged based upon a finding by the Illinois State Police Merit Board that, among other things, she possessed cocaine in violation of a departmental rule requiring officers to conform their conduct to law. *Grames*, 254 Ill. App. 3d at 195, 204. The *Grames* court upheld the order

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of discharge notwithstanding the fact that the officer had been found not guilty in a criminal prosecution against her for possession of a controlled substance. *Grames*, 254 Ill. App. 3d at 204. The court reasoned as follows:

“In an administrative hearing, however, the burden of proof is the lesser civil burden of a preponderance of the evidence; in a criminal proceeding the burden of proof is beyond a reasonable doubt. While the evidence may not have been sufficient to meet the burden of proof in a criminal proceeding, it meets the standard in an administrative proceeding. The judgment in the criminal case is not *res judicata* in this case.” *Grames*, 254 Ill. App. 3d at 204.

See also *In re T.D.*, 180 Ill. App. 3d 608, 612 (1989) (finding of not guilty in a criminal case does not preclude a civil proceeding based upon the same actions, due to the difference in the required burden of proof, since “[i]t is quite conceivable that a fact finder could be convinced by a preponderance of the evidence that a fact occurred while, at the same time, not being convinced beyond a reasonable doubt that it occurred”).

The case of *McCleary v. Bd. of Fire & Police Commission of the City of Woodstock*, 251 Ill. App. 3d 988 (1993), cited by Gonzalez on this issue, is distinguishable. In *McCleary*, the plaintiff police officer was discharged upon findings that he violated an order of protection and committed domestic battery upon his wife. *McCleary*, 251 Ill. App. 3d at 990. Plaintiff presented evidence that, in a criminal proceeding related to the same incident, in which he was also charged with violating an order of protection and committing domestic battery, the charge of violating an order of protection was dismissed. *McCleary*, 251 Ill. App. 3d at 993. In that

criminal proceeding, the circuit court categorically determined “as a matter of law” that he had never been served with the order of protection and therefore could not have violated the statute at issue. *McCleary*, 251 Ill. App. 3d at 992. There does not appear to have been any factual dispute as to whether plaintiff was served with the order of protection, as was a legal prerequisite for criminal liability. *McCleary*, 251 Ill. App. 3d at 992. Accordingly, the circuit court in the underlying criminal proceeding entered an order dismissing the charge of violating an order of protection, leaving the charge of criminal domestic battery still pending. *McCleary*, 251 Ill. App. 3d at 992. Under such facts, the *McCleary* court found that “the violation of the [order of protection] statute was not properly at issue before the Board.” *McCleary*, 251 Ill. App. 3d at 994. Rather, the dismissal of the charge in the criminal proceeding was premised upon the court’s finding that plaintiff was never served with notice of the order of protection. That determination, apparently not having been disputed by the parties, was not dependent upon the degree of proof that would have been required, whether the burden would have been to establish the facts beyond a reasonable doubt or by a preponderance of the evidence. By contrast, in the present case, the criminal proceedings against Gonzalez went to trial, and, as discussed above, even if the evidence would not have been sufficient to find him guilty beyond a reasonable doubt, it could well have been sufficient to meet the lesser standard of proof required in administrative proceedings before the Board. See *Grames*, 254 Ill. App. 3d at 204.

Furthermore, even if we were to find the Board’s finding of guilt as to CPD Rule 1 to have been in error, it would have no bearing upon our decision in the case, because any such error would be harmless. As noted, Gonzalez does not contest the factual findings underlying the

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Board's finding of guilt as to his alleged violation of CPD Rule 1, nor does he contest that the same underlying conduct constituted a violation of CPD Rules 2 and 8. Accordingly, under these facts, a determination that Gonzalez's conduct did not constitute a violation of CPD Rule 1 would not, by itself, be sufficient to require reversal in this case. See *McCleary* (where plaintiff officer was discharged on charges of violation of an order of protection and domestic battery, the Board's error with regard to the first charge was harmless where "the Board had other evidence before it that it could rely on to support its decision" and the improperly admitted evidence was therefore "not critical to the outcome of the hearing").

2. CPD Rule 14

Gonzalez further contends that the Board erred in finding that he violated CPD Rule 14, which prohibits the making of a false report, since it was "not proved" that he lied in the statement that he gave to the Office of Professional Standards, in which he stated that Valdez was the aggressor outside the club. We disagree. Although there was conflicting testimony on this matter, there was ample evidence that Gonzalez attacked Valdez outside the club, and not vice versa. Valdez, his girlfriend Buenrostro, club owner Goutros, club bouncer Sullivan, Officer Gatlin, and Lieutenant Sullivan all testified that Gonzalez lunged, charged, or otherwise took aggressive action toward Valdez when he was walking toward the west parking lot. To the extent that their testimony is contradicted by Gonzalez's witnesses and Gonzalez's own testimony, it was for the Board to decide between them. We cannot say that the Board's decision to believe the evidence against Gonzalez in this regard was against the manifest weight of the evidence. See *Launius*, 151 Ill. 2d at 427-28 (under manifest weight of the evidence standard, it

is not the duty of the reviewing court to resolve factual inconsistencies in the record). We therefore find that there was sufficient evidence to support the Board's finding that Gonzalez was the aggressor outside the club and therefore made a false report to the Office of Professional Standards when he claimed that Valdez was the aggressor.

B. Whether the Findings of Fact Provide Cause for Discharge

Gonzalez next contends that the penalty of discharge was unreasonable in light of the facts and circumstances of his case. In particular, he argues that the incident at the club was a single, off-duty occurrence that was "shown *** to be aberrant behavior" in light of the testimony from his superiors regarding his work performance.

In analyzing this issue, we are governed by the words of our supreme court:

"The question, though, is not whether this court would decide upon a more lenient sanction than discharge were it to determine initially what discipline would be appropriate. Nor is it whether this court would conclude in view of the mitigating circumstances suggested by [the discharged officer] that a different penalty would be more appropriate. The question is whether, in view of the circumstances presented, this court can say that the Civil Service Commission, in opting for discharge, acted unreasonably or arbitrarily or selected a type of discipline unrelated to the needs of the service." *Sutton v. Civil Service Com'n*, 91 Ill. 2d 404, 411 (1982)

In light of this standard, as well as the considerable deference we are required to accord to the decision of the Board (*Walsh*, 96 Ill. 2d at 105), we cannot say that the Board lacked cause for Gonzalez's discharge. When viewed as a whole, Gonzalez's actions displayed a profound

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disrespect for the law and for Department rules, as well as an extreme lack of discipline. Such conduct is unacceptable for a police officer. See *Jones v. Civil Service Commission of Alton*, 80 Ill. App. 3d 74, 76 (1979) (“It is apparent that a police officer who does not abide by the laws that he has a duty to enforce will impair the discipline and efficiency of the police force”); *Kappel v. Police Bd. of City of Chicago*, 220 Ill. App. 3d 580, 591 (1991) (discipline of police officers is “not only vital but absolutely essential”). At the outset, it is undisputed that Gonzalez consumed at least one alcoholic beverage at the club while in possession of his firearm. Gonzalez then compounded this transgression by lunging at Valdez, fighting with the Summit police, and resisting arrest outside of the club.

The severity of Gonzalez’s behavior is exacerbated because his actions brought discredit upon the CPD. Valdez, his girlfriend Buenrostro, and Officer Gatlin all testified that they were aware that Gonzalez was a Chicago police officer prior to his attack on Valdez and his altercation with the Summit police officers outside the club. Our supreme court has stated that discipline of officers is “vital * * * to maintain the respect of the public, without which the department would become incompetent and demoralized.” *DeGrazio v. Civil Service Commission of City of Chicago*, 31 Ill. 2d 482, 488 (1964) (cause existed for discharge of police lieutenant in part because his conduct “would reflect adversely on the police department and subject it to disgrace and ridicule”); see also *Kappel*, 220 Ill. App. 3d at 592 (courts have upheld the discharge of police officers for engaging in misconduct which manifested disrespect for the law and which tended to bring discredit upon the department). Accordingly, Gonzalez’s discharge was warranted, in part, to stem the loss of public respect resulting from the incident.

Furthermore, Gonzalez also committed a serious transgression when, two years after the incident, he lied to an investigator from the CPD's Office of Professional Standards, claiming that he was the victim rather than the aggressor in the altercation with Valdez outside the club. This is problematic because "as the guardians of our laws, police officers are expected to act with integrity, honesty, and trustworthiness." *Sindermann v. Civil Service Com'n of Village of Gurnee*, 275 Ill. App. 3d 917, 928; see also *Village of Oak Lawn v. Human Rights Com'n*, 133 Ill. App. 3d 221, 224 (1985) ("Trustworthiness, reliability, good judgment, and integrity are all material qualifications for any job, particularly one as a police officer").

Nor is it dispositive that the incident in this case was a single occurrence and that Gonzalez's supervisors testified that he was a responsible and hard-working officer. In this regard, the facts of *Sutton*, 91 Ill. 2d 404, are instructive. In *Sutton*, a program supervisor at a correctional center was discharged for asking an inmate about how much money it would take to have the prison warden assassinated. *Sutton*, 91 Ill. 2d at 406. The program supervisor appealed his discharge, and our supreme court affirmed. *Sutton*, 91 Ill. 2d at 413. In doing so, the court rejected the program supervisor's argument that the punishment was excessive given his "years of exemplary service in the Department" and the fact that he made the remarks at issue "thoughtlessly." *Sutton*, 91 Ill. 2d at 411. It explained that the program supervisor's conduct was "clearly irresponsible" under the circumstances and that it could not find the penalty of discharge to be unreasonable, arbitrary, or unrelated to the needs of service, "regardless of what decision we might have reached had we initially determined what sanction was appropriate." *Sutton*, 91 Ill. 2d at 412. Likewise, in the present case, we cannot say the Board's decision was

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“arbitrary and unreasonable or unrelated to the requirements of the service” (*Walsh*, 96 Ill. 2d at 105) in light of Gonzalez’s multiple violations of the CPD Rules.

Therefore, for the foregoing reasons, the judgment of the circuit court is reversed and this cause remanded with instructions to reinstate the Board’s original order discharging Gonzalez.

Reversed and remanded.